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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 IN RE:
8 JOSEPH R. JACKSON,
9 Lawyer.

NO: 13-MC-0007-TOR
REPORT AND RECOMMENDATION

10 THIS MATTER COMES BEFORE the Court based on a referral from Chief
11 Judge Peterson pursuant to Local Rule 83.3. The undersigned Judicial Officer was
12 charged with conducting a disciplinary hearing and issuing a report and
13 recommendation pursuant to Local Rule 83.3(e) and (f). A hearing was held on
14 November 14, 2013. Joseph R. Jackson appeared pro se. The Court makes the
15 following findings of fact, conclusions of law and recommendation:

16 1. The allegations of misconduct are set forth in the Motion for Disciplinary
17 Referral of Attorney, ECF No. 40, filed in the United States Bankruptcy Court for
18 the Eastern District of Washington in case number 10-06985-PCW7, a copy of
19 which is attached hereto.

1 2. Joseph R. Jackson (hereinafter referred to as “Respondent”) filed a Response
2 to Motion for Referral, ECF No. 43, case number 10-06985-PCW7, a copy of
3 which is also attached hereto.

4 3. Chief Judge Peterson issued an order to show cause on July 15, 2013 as to
5 why Joseph R. Jackson should not be disciplined for repeated violations of
6 Bankruptcy Court orders and violations of Washington’s Rules of Professional
7 Conduct. ECF No. 1, in the above entitled case.

8 4. On August 12, 2013, Respondent filed his Response to Order to Show
9 Cause. ECF No. 2.¹ Respondent “do[es] not deny any of the facts asserted in the
10 original referral.” *Id.* at 1.

11 **I. VIOLATIONS AND PRESUMPTIVE SANCTIONS**

12 **Mathena Case**

13 5. In Bankruptcy Case No. 10-06985-PCW7 (“Mathena Case”), Respondent
14 was ordered to disgorge the fees paid to him by the Summer Mathena, the Debtor,
15 by January 7, 2013, and to reimburse the Debtor for her attorney’s fees in the
16 adversary proceeding by February 5, 2013, and pay the \$1,000 sanction by March
17 7, 2013. *See* Case No. 10-06985-PCW7, ECF No. 40 at 2. Respondent was also

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¹ ECF No. references without a corresponding bankruptcy case number relate to
20 this case, 13-MC-0007-TOR.

1 ordered to file a receipt with the Bankruptcy Court signed by the Debtor
2 acknowledging full payment.

3 6. Respondent had not made these payments by May 20, 2013. *See* Case No.
4 10-06985-PCW7, ECF No. 43 at 1.

5 7. As of August 12, 2013, Respondent claims to have paid the money owed.
6 *See* ECF No. 2 at 2-3. Respondent explained that he does not have a lucrative
7 practice and this is why he did not timely pay the amounts due. *Id.* Respondent
8 did not file a receipt with the Bankruptcy Court as he was ordered.

9 8. The Court finds that the above conduct amounts to a knowing failure to
10 comply with a court order.

11 9. This conduct injured the client by depriving her of funds to which she was
12 entitled for a period of several months. This conduct also resulted in injury to the
13 orderly administration of the legal system.

14 10. The presumptive sanction for this conduct is suspension under ABA
15 Standard 6.22:

16 **Suspension** is generally appropriate when a lawyer knows that
17 he or she is violating a court order or rule, and causes injury or
18 potential injury to a client or a party, or causes interference or
19 potential interference with a legal proceeding.

20 11. Also in the Mathena Case, the Bankruptcy Court found that Respondent
failed to keep the Debtor properly informed about the status of her case, and failed

1 to obtain the Debtor's consent prior to taking actions on her behalf. Respondent
2 has not disputed this finding. Case No. 10-06985-PCW7, ECF No. 38. Respondent
3 was sanctioned \$1,000 by the Bankruptcy Court. *Id.*

4 12. The above conduct violates RPC 1.4, which requires an attorney to keep the
5 client informed about the representation, and RPC 1.2(f), which prohibits an
6 attorney from acting for a client without authority.

7 13. The Court finds that Respondent acted negligently with respect to the above
8 violations.

9 14. These violations resulted in potential injury to the client, as the client was
10 deprived of important information and was deprived of her right to control the
11 progression of the case.

12 15. The presumptive sanction for these violations is reprimand under ABA
13 Standard 4.43:

14 a. **Reprimand** is generally appropriate when a lawyer is negligent
15 and does not act with reasonable diligence in representing a
client, and causes injury or potential injury to a client.

16 **Parker Case**

17 16. In Bankruptcy Case No. 10-00268-FLK7 ("Parker Case"), on September 7,
18 2010, Respondent was ordered to disgorge all amounts paid to him by the Parkers,
19 the Debtors, and to file a receipt signed by the Debtors indicating full payment to
20 them. *See* Case No. 10-00268-FLK7, ECF No. 24.

1 17. Respondent never provided the Bankruptcy Court with a receipt signed by
2 the Debtors showing that he disgorged his fees and paid them in full.

3 18. On August 12, 2013, Respondent claimed he paid the Parkers on August 25,
4 2010, but they did not give him a signed receipt. ECF No. 2 at 3. On August 27,
5 2010, Respondent filed an unsigned statement in the Bankruptcy Court that he
6 mailed the Parkers a check. Case No. 10-00268-PCW13, ECF No. 22. That did
7 not satisfy the Bankruptcy Court's order.

8 19. The Court finds that the above conduct amounts to a negligent failure to
9 comply with a court order.

10 20. This conduct resulted in a potential injury to the orderly administration of
11 the legal system.

12 21. The presumptive sanction for this conduct is reprimand under ABA Standard
13 6.23:

14 **Reprimand** is generally appropriate when a lawyer negligently
15 fails to comply with a court order or rule, and causes injury or
16 potential injury to a client or other party, or causes interference
17 or potential interference with a legal proceeding.

18 **Vinson Case**

19 22. In Bankruptcy Case No. 10-05135-PCW7 ("Vinson Case"), on January 3,
20 2011, Respondent was ordered to disgorge all amounts paid to him by Vinson, the

1 Debtor, and to file a receipt signed by the Debtor indicating full payment to her.

2 *See Case No. 10-05135-PCW7, ECF No. 21.*

3 23. Respondent never provided the Bankruptcy Court with proof that he
4 disgorged his fees and paid the Debtor in full.

5 24. On August 12, 2013, Respondent claimed he re-filed another bankruptcy
6 case for Vinson when she was eligible, and thus, he did not reimburse her for the
7 fees he was ordered to pay her. ECF No. 2 at 3-4. At the hearing before this
8 Court, Respondent indicated that reimbursing the client pursuant to the Bankruptcy
9 Court's order "just seemed like kind of a pointless step" since the client wished to
10 have him file another case. Respondent does not contest that he did not file proof
11 of reimbursement with the Bankruptcy Court.

12 25. This conduct resulted in injury to the orderly administration of the legal
13 system, as Respondent unilaterally disregarded the Bankruptcy Court's instruction
14 that he reimburse the client.

15 26. The presumptive sanction for this conduct is suspension under ABA
16 Standard 6.22:

17 **Suspension** is generally appropriate when a lawyer knows that he or
18 she is violating a court order or rule, and causes injury or potential
19 injury to a client or a party, or causes interference or potential
20 interference with a legal proceeding.

1 **Inaccuracies in Income and Expense Reporting**

2 27. The United States Trustee outlined eight cases in which Respondent
3 prepared “Statements of Current Monthly Income and Means Test Calculation” for
4 his clients. *See* Case No. 10-06985-PCW7, ECF No. 40 at 4-5. The claimed
5 amount of monthly income or expense in these eight cases was wrong by hundreds
6 or thousands of dollars.

7 28. Respondent does not deny the inaccuracy of the Means Test Forms filed in
8 his cases. Respondent explained that he usually asks his clients “if their income
9 has been steady so that their six month average would match their two month
10 average” then asks “them for only the last two months (sic) pay stubs.” ECF No. 2
11 at 5. Respondent further explained that if he “could charge more for each case,
12 [he] could spend extra hours carefully analyzing their income and expenses.” *Id.* at
13 6. Respondent said that, “I choose to charge less and have less time spent on data
14 gathering and analysis.” *Id.* at 6-7. Respondent further explained that “I have no
15 choice but to rely on the data the client supplies. If I have any reason to suspect
16 the data is not accurate, I have a duty of further inquiry but expecting more than
17 that is unrealistic.” *Id.* at 6.

18 29. The above conduct violates RPC 3.3, which prohibits providing false
19 information to a court, and RPC 3.4, which prohibits an attorney from providing
20 false evidence or otherwise obstructing another party’s access to evidence.

1 30. The Court finds that Respondent acted negligently with respect to the above
2 violations.

3 31. These violations resulted in injury to the orderly administration of the legal
4 system, as the United States Trustee was required to expend resources ferreting out
5 the inaccuracies.

6 32. The presumptive sanction for these violations is reprimand under ABA
7 Standard 6.13:

8 **Reprimand** is generally appropriate when a lawyer is negligent
9 either in determining whether statements or documents are false
10 or in taking remedial action when material information is being
11 withheld, and causes injury or potential injury to a party to the
12 legal proceeding, or causes an adverse or potentially adverse
13 effect on the legal proceeding.

14 **Warren Case**

15 33. In Bankruptcy Case No. 12-03572-PCW7 (“Warren Case”), the Debtor’s
16 Means Test Form indicated that the Debtor, Mr. Warren, was paying \$1,250 in
17 support to his ex-wife. The United States Trustee determined that the Debtor was
18 actually receiving this \$1,250 in support from his ex-wife. Effectively, this is a
19 \$2,500 mistake. The Debtor claimed he told Respondent the correct information.
20 The Debtor also indicated that the schedules omitted hundreds of dollars in
expenses. *See* Case No. 10-06985-PCW7, ECF No. 40 at 7.

1 34. Respondent admitted that his office had made the \$1,250 error while
2 preparing the schedules. During the bankruptcy proceeding, Respondent admitted
3 on the record that he intentionally did not include all of the Debtor's expenses on
4 the schedules so that it would appear that the Debtor could afford to reaffirm the
5 payments on his pickup truck and the Court would approve that reaffirmation
6 agreement. *See* Case No. 10-06985-PCW7, ECF No. 40 at 7.

7 35. Before this Court, Respondent explained with respect to preparation of the
8 schedules for Mr. Warren, "the numbers he gave me for his expenses didn't work
9 and I adjusted them. Because I was trying to cover a \$2500 gap between income
10 and expenses, I adjusted them a lot... I adjusted his budget because I knew his
11 expenses did not greatly exceed his income. He accepted the numbers I used. It
12 turns out there was a false assumption in there which greatly skewed the result."
13 ECF No. 2 at 4.

14 36. The above conduct violates RPC 3.3, which prohibits providing false
15 information to a court, and RPC 3.4, which prohibits an attorney from providing
16 false evidence or otherwise obstructing another party's access to evidence.

17 37. The Court finds that Respondent acted knowingly with respect to the above
18 violations.

19 38. These violations resulted in potential injury to the Debtor's creditors and to
20 the orderly administration of the legal system, as the Debtor presumably would

1 have qualified to proceed with a Chapter 7 bankruptcy had the error and
2 falsifications not been discovered.

3 39. The presumptive sanction for these violations is suspension under ABA
4 Standard 6.12:

5 **Suspension** is generally appropriate when a lawyer knows that
6 false statements or documents are being submitted to the court
7 or that material information is improperly being withheld, and
8 takes no remedial action, and causes injury or potential injury to
9 a party to the legal proceeding, or causes an adverse or
10 potentially adverse effect on the legal proceeding.

11 **McMahan Case**

12 10. In Bankruptcy Case No. 12-03105-PCW7 (“McMahan Case”), the Debtors’
13 monthly income was understated by about \$2,500. The Debtor, Mr. McMahan
14 testified that he received a large pre-petition bonus during the six month period
15 prior to filing. Mr. McMahan testified that he did not realize that he needed to
16 include the bonus as monthly income, however he testified that he gave all his
17 payment advices, including those showing the bonus, to Respondent before the
18 case was filed. *See* Case No. 10-06985-PCW7, ECF No. 40 at 8.

19 17. 41. The United States Trustee requested copies of the payment advices from
20 Respondent for the six month pre-petition period. Respondent did not provide the
payment advices for the periods involving the bonus. Respondent ignored the
Trustee’s repeated requests for those missing payment advices. Several months

1 later, on March 20, 2013, the United States Trustee obtained a court order
2 compelling the Debtor to amend his schedules to reflect the correct information.
3 Case No. 12-03105-PCW7, ECF No. 33.

4 42. Respondent explained that he confirmed Mr. McMahan's pay stubs matched
5 his claimed salary. ECF No. 2 at 6. Respondent claims that if he had studied his
6 year to date income, he would have seen an apparent discrepancy meriting further
7 inquiry." *Id.* Respondent does not address why he did not turn over Mr.
8 McMahan's pay advices showing the bonus payments when the discrepancy was
9 brought to his attention and despite repeated requests for the documents.

10 43. The above conduct violates RPC 3.3, which prohibits providing false
11 information to a court, and RPC 3.4, which prohibits an attorney from providing
12 false evidence or otherwise obstructing another party's access to evidence.

13 44. The Court finds that Respondent acted negligently with respect to the above
14 violations.

15 45. These violations resulted in injury to the orderly administration of the legal
16 system, as the United States Trustee was required to expend resources identifying
17 the error and obtaining a subpoena ordering Respondent to produce the subject pay
18 advices reflecting Mr. McMahan's bonus payments.

19 46. The presumptive sanction for these violations is reprimand under ABA
20 Standard 6.13:

1 **Reprimand** is generally appropriate when a lawyer is negligent
2 either in determining whether statements or documents are false
3 or in taking remedial action when material information is being
4 withheld, and causes injury or potential injury to a party to the
5 legal proceeding, or causes an adverse or potentially adverse
6 effect on the legal proceeding.

5 **II. AGGRAVATING AND MITIGATING FACTORS**

6 47. The “multiple offenses” aggravating factor applies “where an attorney faces
7 multiple counts of violating the RPCs.” *In re Disciplinary Proceeding against*
8 *Starczewski*, 177 Wash.2d 771, 792 (2013). The multiple offenses factor applies
9 here because Respondent has been found to have violated multiple RPCs.

10 48. The “pattern of misconduct” aggravating factor applies where “a series of
11 acts of misconduct are alleged in one complaint.” *In re Disciplinary Proceeding*
12 *against Kamb*, 177 Wash.2d 851, 867 (2013). The pattern of misconduct factor
13 applies here because Respondent repeatedly failed to conduct an adequate inquiry
14 into the accuracy of income and expenses reported on his clients’ Statements of
15 Current Monthly Income and Means Test Calculations.

16 49. The “substantial experience in the practice of law” aggravating factor
17 applies because Respondent has over 30 years’ experience practicing law.

18 50. The “indifference to making restitution” aggravating factor applies because
19 Respondent delayed restitution payments to Ms. Mathena for several months after
20 he was ordered to do so by the Bankruptcy Court.

1 51. The Court finds that no mitigating factors apply. Respondent's alleged
2 inability to reimburse Ms. Mathena in a timely manner due to a lack of funds is not
3 a relevant circumstance, as an attorney's personal financial problems are generally
4 not considered to be a mitigating factor. *In re Disciplinary Proceeding against*
5 *Starczewski*, 177 Wash.2d 771, 794 (2013).

6 **III. RECOMMENDATION**

7 52. Departure from a presumptive sanction is only appropriate when "the
8 balance of aggravating and mitigating factors is sufficiently compelling." *In re*
9 *Disciplinary Proceeding against Rodriguez*, 177 Wash.2d 872, 888 (2013). "The
10 weight given to mitigating factors depends on the totality of the circumstances."
11 *Id.* at 901. "If suspension is the presumptive sanction, the baseline period of
12 suspension is presumptively six months." *In re Disciplinary Proceeding against*
13 *McGrath*, 174 Wash.2d 813, 831 (2012). This period is "better characterized as a
14 'presumptive starting point' rather than a 'minimum.'" *Id.* at 832 (citation
15 omitted). "The suspension period may increase or decrease depending on the
16 number of acts of misconduct, the seriousness of the misconduct, and the
17 mitigating and aggravating factors. *Id.* (footnote omitted).

18 53. The Court finds no basis for departing from the presumptive
19 sanctions outlined above, the most severe of which is suspension. Nor does the
20 Court find any reason to depart from the presumptive suspension period of six

1 months. The Court therefore respectfully recommends that Respondent be
2 suspended from the practice of law before the Courts of the Eastern District of
3 Washington for a period of six months.

4 54. The Court further recommends that this proceeding be reported to the
5 Washington State Bar Association in accordance with RPC 8.3.

6 **ACCORDINGLY, IT IS ORDERED:**

7 1. Joseph R. Jackson shall file a response, if any, within 21 days after
8 service of this Report and Recommendation upon him through the
9 electronic court filing system.

10 2. This matter is now referred back to Chief Judge Peterson for further
11 proceedings.

12 The District Court Executive is hereby directed to enter this Report and
13 Recommendation and furnish copies to Joseph R. Jackson and Chief Judge
14 Peterson.

15 **DATED** November 18, 2013.



A handwritten signature in blue ink that reads "Thomas O. Rice".

16 17 18 19 20
THOMAS O. RICE
United States District Judge

1 JAMES D. PERKINS, WSBA #12996
2 Attorney for the United States Trustee
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10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

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13 In re:

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15 Summer K. Mathena
16 Debtor

17 Case No. 10-06985-PCW7

18 **UNITED STATES TRUSTEE'S MOTION**
19 **FOR REFERRAL OF ATTORNEY FOR**
20 **DISCIPLINARY PROCEEDINGS**

21 Gail Brehm Geiger, the Acting United States Trustee for Region 18 (the "United
22 States Trustee"), by and through her attorney, James D. Perkins, moves for a referral of
23 attorney Joseph Jackson to the United States District Court for disciplinary proceedings
24 pursuant to District Court Local Rule 83.3(b), along with such supplemental relief as is
25 appropriate.

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27 **BASIS FOR RELIEF**

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29 District Court Local Rule 83.3(b) provides a procedure for the initiation of attorney
30 disciplinary proceedings leading to disbarment, suspension, or a reprimand by the
31 District Court on the written recommendation of a bankruptcy judge of this Court to the
32 chief judge of the District Court. Such discipline must be based on either:

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35 a) Conduct violating the Rules of Professional Conduct of the Washington
36 State Bar; or

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38 b) Non-compliance with either the rules or the orders of the Court.

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40 District Court Local Rule 83.3(a). The United States Trustee asserts that attorney

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43 Motion for Disciplinary Referral of Attorney - 1

1 Joseph Jackson (Mr. Jackson) should be referred to the District Court for discipline for
2 both of the reasons listed above, as set out in more detail below.

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4 **I. MR. JACKSON HAS NOT COMPLIED WITH THE ORDERS OF THIS COURT**

5 **A. In This Case**

6 1. On November 7, 2012 the Court entered an order in this case requiring Mr.
7 Jackson to (a) refund to the Debtor in this case all amounts she had paid him in
8 connection with both this and a prior case he filed for her (Case No. 07-01639-
9 FLK7), (b) reimburse the Debtor for all amounts she incurred defending herself in
10 connection with Adversary Proceeding No. 11-80051-PCW brought against her
11 by the United States Trustee, and (c) pay a sanction of \$1,000 to the Court.
12 Docket #38 (the “Mathena Order”). This Order was based on Mr. Jackson’s
13 numerous failures to properly represent the Debtor in this and her prior case and
14 was not contested by Mr. Jackson.
15 2. Mr. Jackson asked for an extended period of time in which to pay these amounts,
16 which request was granted by the Court. The Mathena Order requires Mr.
17 Jackson to disgorge the fees paid to him by the Debtor by January 7, 2013,
18 reimburse the Debtor for her attorney’s fees in the adversary proceeding by
19 February 5, 2013, and pay the \$1000 sanction by March 7, 2013. In addition, the
20 Mathena Order requires Mr. Jackson to file with the Court a receipt signed by the
21 Debtor indicating his full payment to the Debtor of the amounts identified in the
22 order by February 5, 2013.
23 3. As of the date of this motion, the court file in this case does not reflect either the
24 payment of the ordered sanction or the filing of the receipt required by the
25 Mathena Order. In addition, the United States Trustee has confirmed with new
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1 counsel for the Debtor that Mr. Jackson has not paid the Debtor any funds under
2 the Mathena Order.

3 4. Based on all of the above, the United States Trustee asserts that Mr. Jackson
4 has not complied with the terms of the Mathena Order.

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6 B. In re Parker, Case No. 10-00268-FLK7 and In re Vinson, Case No. 10-05138-PCW7

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2. In re Vinson. Similarly, Mr. Jackson filed a Chapter 7 case for the Debtor even though he either knew or should have known that she was ineligible for discharge because she had received a Chapter 7 discharge in a prior case he had filed for her less than 8 years prior. When the United States Trustee contacted Mr. Jackson about this, he failed to take any action to correct the situation or even respond to the United States Trustee's inquiry. Based on this conduct, the Court ordered Mr. Jackson to disgorge all amounts paid to him by Ms. Vinson in connection with the second case. See Case No. 10-05135-PCW7, Docket #21.

Motion for Disciplinary Referral of Attorney - 3

1 3. In both the Parker case and the Vinson case the Court's orders directing
2 disgorgement required Mr. Jackson to file with the Court a receipt signed by the
3 Debtors indicating full payment by Mr. Jackson of the amounts identified in the
4 applicable order. As of the date of this motion, neither the Vinson nor the Parker
5 court file reflects the filing of the required receipt. The United States Trustee
6 does not currently know whether Mr. Jackson disgorged these fees to the clients
7 as ordered by this Court.

8 4. Based on all of the above, the United States Trustee asserts that Mr. Jackson
9 has not complied with the terms of the Vinson and Parker Orders.

10

11 **II. MR. JACKSON HAS REPEATEDLY VIOLATED THE WASHINGTON RULES OF
12 PROFESSIONAL CONDUCT IN HIS REPRESENTATION OF CLIENTS IN THIS
13 COURT**

14 A. Mr. Jackson Repeatedly Violated the Rules of Professional Conduct In This Case
15 1. In connection with entry of the Mathena Order, the Court made a finding that Mr.
16 Jackson's conduct in this case was deficient in several ways, including (1) failing
17 to keep the Debtor properly informed about the status of her case, and (2) failing
18 to obtain the Debtor's consent prior to taking actions on her behalf.
19 2. This conduct violated, at a minimum, RPC 1.2(f) which prohibits an attorney from
20 acting for a client without authority, and RPC 1.4 which requires an attorney to
21 keep the client informed about the representation.

22

23 B. Mr. Jackson Violated the Rules of Professional Conduct in Various 2012 Chapter

24 7 Cases

25 1. In the course of reviewing Chapter 7 cases for Section 707(b) abuse, the United
26 States Trustee has noticed that the income and expense figures listed on the
27 Statements of Current Monthly Income and Means Test Calculation (also

1 referred to as "Means Test Forms") filed in Mr. Jackson's cases are often
 2 substantially wrong. In cases filed by Mr. Jackson in calendar year 2012, the
 3 United States Trustee has found and investigated the following cases with
 4 substantial discrepancies:

	<u>Case Name and Number</u>	<u>Stated Amount of Income or Expense</u>	<u>Correct Amount of Income or Expense</u>
7	a. <i>In re Harris</i> , Case No. 12-00090	\$2090/month	\$3800/month
8	b. <i>In re Kincaid</i> , Case No. 12-02244	\$5833/month	\$4600/month
9	c. <i>In re Montoya</i> , Case No. 12-02472	\$8400/month	\$8725/month
10	d. <i>In re Reiman</i> , Case No. 12-02739	\$8500/month	\$9600/month
11	e. <i>In re McMahan</i> , Case No. 12-03105	\$5000/month	\$7500/month
12	f. <i>In re Kenoyer</i> , Case No. 12-03305	\$7000/month	\$5400/month
13	g. <i>In re Barrows</i> , Case No. 12-03909	\$4100/month	\$5300/month
14	h. <i>In re Toffen</i> , Case No. 12-05011	\$5100/month	\$7400/month

15 A more detailed description of each of these cases, including the impact of these
 16 errors on the outcome of each case, is contained in Exhibit A to this Motion.

17 2. As this Court is aware, accurate preparation of the Means Test Form is a critical
 18 part of an attorney's representation of a debtor in a Chapter 7 case. As reflected
 19 above, Mr. Jackson's preparation of that document for his clients is regularly
 20 wrong by hundreds or thousands of dollars per month. These misstatements
 21 lead to review of the case by the United States Trustee's office, to delay of the
 22 case, often to the need to dismiss the case or convert to Chapter 13, and to the
 23 potential for denial of the client's discharge for filing false statements made under
 24 oath.

25 3. If these regular inaccuracies are the result of Mr. Jackson's inability or
 26 unwillingness to correctly calculate his client's income, then they indicate that he

1 is not competent to practice law as a debtor's attorney, in violation of RPC 1.1. If
2 these inaccuracies are the result of an intentional decision by Mr. Jackson and/or
3 his client to falsely report income and/or expenses, then they are a violation of
4 RPC 1.2(d) which prohibits an attorney from counseling a client to commit
5 fraudulent or criminal behavior, RPC 3.2 which prohibits providing false
6 information to a court, and RPC 3.4 which prohibits deceitful conduct, conduct
7 prejudicial to the administration of justice, and conduct demonstrating an
8 unfitness to practice law. Finally, this pattern implicates the provisions of 11
9 U.S.C. §707(b)(4)(D) which provides that Mr. Jackson's signature on a
10 bankruptcy petition is a certification that he has no knowledge after an inquiry
11 that the information in the schedules filed with the petition is incorrect.

12

13 C. Mr. Jackson Violated the Rules of Professional Conduct in In re Warren, Case No.
14 12-03572-PCW7

15 1. Mr. Warren's schedules indicate that he is paying his ex-wife \$1,250 per month in
16 support, which leaves him with no disposable income to pay his creditors.
17 However, the United States Trustee's investigation has determined that Mr.
18 Warren is not paying, but instead receiving, the support payments in the amount
19 of \$1,250 per month. This change would both increase Mr. Warren's income by
20 \$1,250 per month and reduce his expenses by the same amount, resulting in an
21 additional \$2,500 per month of disposable income for Mr. Warren.

22 2. The United States Trustee recently conducted a Rule 2004 Exam of Mr. Warren
23 in order to learn how his Means Test Form and Schedules I & J could have been
24 so wrong in this regard. At the Rule 2004 Exam, Mr. Warren was very forthright
25 about this inaccuracy in his statements and schedules and testified that he had
26 provided the correct information to Mr. Jackson who had then prepared his

1 bankruptcy documents with erroneous information. Mr. Jackson then indicated
2 on the record that this was correct and produced a questionnaire prepared by Mr.
3 Warren correctly listing the support as income to him, not as an expense. Mr.
4 Jackson further indicated that his office had made the error in preparing the
5 schedules. Mr. Warren testified that he had reviewed the schedules before
6 signing, but had not noticed this error.

7 3. Mr. Warren was then asked about the effect of this error on his disposable
8 income. He reviewed his Schedule J and determined that many of his monthly
9 expenses were not listed on it. Upon reviewing the questionnaire he had
10 provided to Mr. Jackson's office, it was determined that hundreds of dollars of Mr.
11 Warren's monthly expenses had not been listed on Schedule J. Mr. Warren
12 testified that he did not know why that had happened. Mr. Jackson then
13 indicated on the record that he had made the decision not to include all of Mr.
14 Warren's expenses on Schedule J. Mr. Jackson further indicated that he had
15 done that intentionally so that it would appear that Mr. Warren could afford to
16 reaffirm the payments on his pickup truck and the Court would approve that
17 reaffirmation agreement.

18 4. These actions again cast doubt on Mr. Jackson's competence to practice law as
19 a debtor's attorney in violation of RPC 1.1, but more importantly violate RPC 3.1
20 which prohibits advancing non-meritorious claims, RPC 3.2 which prohibits
21 providing false information to a court, and RPC 3.4 which prohibits deceitful
22 conduct, conduct prejudicial to the administration of justice, and conduct
23 demonstrating an unfitness to practice law.

25 D. Mr. Jackson Violated the Rules of Professional Conduct in In re McMahan, Case
26 #12-03105-PCW7

28 Motion for Disciplinary Referral of Attorney - 7

1. This is one of the cases discussed above in which the Debtors' income was
2 dramatically understated, in this case by about \$2500 per month. The reason for
3 that understatement was that Mr. McMahan received a large bonus during the six
4 month pre-petition measuring period and that bonus was not included in the
5 calculation of his monthly income.¹
6. Mr. McMahan testified at a Rule 2004 Exam that he did not realize that he
7 needed to include this bonus income and had simply put down his regular
8 monthly salary on the information he gave to Mr. Jackson to prepare the
9 statements and schedules. However, he also testified that he gave all of his
10 payment advices, including those with the bonus payments, to Mr. Jackson
11 before the case was filed.
12. Despite Mr. Jackson having Mr. McMahan's payment advices, when the United
13 States Trustee requested copies of the Debtors' payment advices for the six
14 month measuring period, Mr. Jackson initially did not provide those for the bonus
15 periods. Mr. Jackson thereafter simply ignored the United States Trustee's
16 repeated requests for those missing payment advices, until several months later,
17 after the United States Trustee obtained a court order and served on him a
18 subpoena compelling production of those documents.
19. Mr. Jackson's failure to produce those payment advices which disclosed this
20 bonus, while producing those payment advices which were consistent with the
21 income figure on the B22 form, suggests that he intentionally withheld those
22 payment advices which were damaging to his clients' case. Mr. Jackson's
23 conduct in this case appears to violate both RPC 3.4 which prohibits deceitful
24 conduct, conduct prejudicial to the administration of justice, and conduct

²⁶ 11 U.S.C. §101(10A) provides that Current Monthly Income means the income from all sources received by the Debtor during the six calendar months preceding the filing of the petition for relief, which includes this bonus.

1 demonstrating an unfitness to practice law, and 11 U.S.C. §707(b)(4)(D) which
2 provides that Mr. Jackson's signature on a bankruptcy petition is a certification
3 that he has no knowledge after an inquiry that the information in the schedules
4 filed with the petition is incorrect.

REQUEST FOR RELIEF

16 Dated: April 29, 2013

Respectfully submitted,

GAIL BREHM GEIGER
Acting United States Trustee

/S/ James D. Perkins
JAMES D. PERKINS
Attorney for the United States Trustee

Motion for Disciplinary Referral of Attorney - 9

1 EXHIBIT A
2
34 Case Summaries
5
6

7 1. *In re Harris*, Case No. 12-00090. The Means Test Form indicates that the
8 Debtor's income is \$2,090 per month. The United States Trustee conducted a
9 full review of the Debtor's financial situation, including reviewing all of the
10 Debtor's payment advices for the six months pre-petition measuring period. That
11 review indicated that the Debtor's correct income on his Means Test Form should
12 have been almost \$1,800 per month higher than the scheduled amount.
13

14 2. *In re Kincaid*, Case No. 12-02244. The Means Test Form indicates that the
15 Debtor's income is \$5,833 per month. Again, following a full review of the
16 Debtor's financial situation, the United States Trustee determined that the
17 Debtor's correct income for his Means Test Form was actually \$1,200 per month
18 lower than the amount listed by the Debtor on the Means Test Form.
19

20 3. *In re Montoya*, Case No. 12-02472. The Means Test Form indicates that the
21 Debtors' combined gross income is approximately \$8,400 per month. The United
22 States Trustee's complete review of the Debtors' payment advices indicated that
23 the Debtors' correct income on their Means Test Form was approximately \$325
24 per month higher than the amount listed by the Debtor on the Means Test Form,
25 which caused the presumption of abuse to arise.
26

27 4. *In re Reiman*, Case No. 12-02739. The Means Test Form indicates that the
28 Debtor's household income is approximately \$8,500 per month. The United
States Trustee's complete review of the Debtor's payment advices indicated that
the Debtor's correct household income on the Means Test Form was
approximately \$9,600 per month, which put the Debtor above the applicable
median income.

1 5. *In re McMahan*, Case No. 12-03105. The Means Test Form indicates that the
2 Debtors' income is \$5,000 per month. The United States Trustee's complete
3 review of the Debtors' payment advices indicated that the Debtors' correct
4 income on their Means Test Form was approximately \$2,500 per month higher
5 than the amount listed by the Debtors on the Means Test Form, again putting
6 them above the applicable median income.

7 6. *In re Kenoyer*, Case No. 12-03305. The Means Test Form indicates that the
8 Debtors' income is approximately \$1,000 per month above the median income
9 for their household size, but that the presumption of abuse does not arise. The
10 United States Trustee conducted a full review of the Debtors' financial situation
11 which indicated that the Debtors' expenses were overstated by approximately
12 \$1,600 per month. However that review also determined that the Debtors'
13 income on their Means Test Form had been overstated by approximately \$800
14 per month, which offset the inaccurate statement of expenses so that the
15 presumption of abuse still did not arise.

16 7. *In re Barrows*, Case No. 12-03909. The Means Test Form indicates that the
17 Debtors' household income is \$4,100 per month. The United States Trustee's
18 complete review of the Debtors' payment advices indicated that the Debtors'
19 correct income on their Means Test Form was approximately \$1,200 per month
20 lower than the amount listed by the Debtor on the Means Test Form.

21 8. *In re Toften*, Case No. 12-05011. The Means Test Form indicates that the
22 Debtors' income is approximately \$5,100 per month. The United States
23 Trustee's complete review of the Debtors' payment advices indicated that the
24 Debtors' correct income on their Means Test Form was approximately \$7,400 per
25 month, which is above the applicable median income.

26

27

1 JOSEPH R. JACKSON
 JACKSON LAW OFFICES, P.S.
 2 230 Grant Road, Suite B-23
 East Wenatchee, WA 98802
 3 (509) 884-7400

4
 5 UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON

6 In RE:) CHAPTER 13
 7 MATHENA, SUMMER,) No. 10-06985
 8 Debtor.) RESPONSE TO MOTION
 FOR REFERRAL

10 When the court ordered in November 2012 that I pay certain sanctions, my concern was not the
 11 payment but the timing. Representing debtors who by definition have little assets, the fees I can charge
 12 are constrained by the abilities of my clients. Especially in winter, when it is too cold for people to be
 13 out much, filings are down and my income is limited. My average revenue in a case is \$600. To keep
 14 my office open and pay my modest salary of \$5000.00 requires filing at least 14 cases per month. This
 15 year nationwide and in this district total filings have been down 14% so I have been doing good to file
 16 14 cases a month. I have been continually waiting for excess income so I could pay the sanctions, but
 17 we have barely made payroll and paid the rent and other necessary office expenses this year. Many times
 18 my salary has been paid late, because I, as a business owner, I come last.

19 Obviously, this can not continue indefinitely, and I am arranging a loan to pay the entire \$4679
 20 in sanctions this week. Proof of transmission of those moneys should be filed with the court by Friday
 21 May 24th. Payment to Summer Mathena is being routed to her Attorney so filing a receipt from her may
 22 take a little more time.

23 I have been filing bankruptcies as a primary vocation since 1998. In that time I have filed more
 24 than 3400 cases. This means 3400 former clients who for the most part have no other contact with an
 25 attorney. So that also means 3400 people who may be calling or stopping by my office at any time to
 ask a legal question or seek a referral. Because I feel a moral obligation to run my office under the
 principal that I want to treat my clients the way I would like to be treated, I respond to all those requests.
 I am working full time 5 ½ days a week to keep up with my work load. And it is fair to say that
 sometimes little details fall through the cracks. All this is meant to say that I am doing the best I can to
 help a lot of people for as little money as possible, including accepting a salary that is less than the

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1 average salary for recent law school graduates.

2 **Data Errors.**

3 The U. S. Trustee's office cites several cases where there were factual errors in filed schedules.
 4 In every case, I have the client fill out a questionnaire. They are also requested to provide tax returns and
 5 pay stubs. Because obtaining a lot of pay stubs can be significant effort, I usually ask them if their
 6 income has been steady so that their six month average would match their two month average. Unless
 7 the answer is no, I usually ask them for only the last two months pay stubs. I will then look at the pay
 8 stubs to see if they seem to match the income and deductions they listed on the questionnaire. How much
 9 time is spent analyzing the pay stubs to see if they disclose total average income over six months
 10 different than over two months varies from case to case depending on a variety of factors. As an
 11 example, in the case of Troy McMahon, he specified a specific salary that he received every pay check.
 12 This matched exactly the amount on his pay stubs. This is highly unusual because even most people on
 13 a salary get paid extra for overtime. So his stated income matched his pay stubs so I listed that as his
 14 income. If I had studied his year to date income, I would have seen an apparent discrepancy meriting
 15 further inquiry. But that would not have been conclusive, because we find that many times, year to date
 16 income stated on pay stubs is not really year to date income because it includes all income paid out in that
 17 year even if the first pay stubs issued on, for example, January 5th includes all income earned in the full
 18 two weeks before that date.

19 In the world of clients who complain, want to get whatever they can without paying for it, and
 20 frequently give inaccurate information, getting every detail correct in every petition would be an
 21 impossible dream. In 2012, I filed 214 cases. Each case has 50 to 100 pieces of data. That data was
 22 supplied by the clients. I have no choice but to rely on the data the client supplies. If I have any reason
 23 to suspect the data is not accurate, I have a duty of further inquiry but expecting more than that is
 24 unrealistic. At a minimum it would require me to raise my fees to a level which would price many people
 25 out of the possibility of getting relief from their debts under the bankruptcy code. In my mind that is a
 denial of justice.

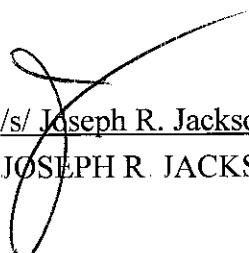
26 **Refunds In Other Cases.**

27 The monies paid by Donald Parker were refunded to him in check number 2723 which was
 28 written on August 25th, 2010. Lynette Vinson elected instead of a refund to have us re file her bankruptcy
 for her without additional charge when she was again eligible to do so which was done.

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2 **Suggested Resolution.**
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4 If there is a problem here, it is lack of organization. Rather than referring this case for discipline
5 the court should require me to meet with Pete Roberts, the Bar Association practice expert and
6 implement whatever reasonable suggestions he has to eliminate the failures described in the motion. The
7 court will undoubtedly set deadlines for receipt of monetary sanctions, but that is handled as soon as loan
fundings is completed, certainly this week.

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11 /s/ Joseph R. Jackson
12 JOSEPH R. JACKSON
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